Supreme Court, U. S.
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In the Supreme Court of the United States

OCTOBER TERM, 1977

NO. 77-1492

RAPIDES PARISH POLICE JURY, ET AL.,

Petitioners

versus

THOMAS R. PARNELL, ET AL.,

Respondents

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT AND FOR A STAY OF PROCEEDINGS

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT AND FOR A STAY OF PROCEEDINGS

The petitioners, the Rapides Parish Police Jury and certain individual members thereof, respectfully pray that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit entered in this proceeding on November 17, 1977 and for a stay of proceedings pending action by this court.

OPINION BELOW

The opinion of the Court of Appeals, not yet reported, appears in the Appendix hereto. The opinion of the district court, not reported, also appears in the Appendix hereto.

JURISDICTION

The judgment of the Court of Appeals for the Fifth Circuit

was entered on November 17, 1977. A timely application for rehearing and rehearing en banc was denied on February 3, 1978, and this petition for certiorari and for a stay of proceedings was filed within 90 days of that date. This court's jurisdiction is invoked under 28 U.S.C. Section 1254 (1).

QUESTION PRESENTED

Whether a federal district court can reduce the size of a parish (county) governing body (police jury) in a reapportionment action from 18 members to 9 members when there was no showing that such a drastic reduction was necessary either to achieve a one man, one vote ratio or to insure an identifiable minority access to the political process when such a reduction was not sought by any party and appears to be in a direct conflict with this court's holding in *Sixty-Seventh Minnesota Senate v. Beens*, 406 U.S. 187; 92 S.Ct. 1477 (1972).

CONSTITUTIONAL PROVISIONS INVOLVED

U.S.C.A. Constitution Amendment 14 Section 1

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATUTORY PROVISIONS INVOLVED

28 U.S.C.A. Section 1343 (3)(4)

> "The district court shall have original jurisdiction of any civil action authorized by law to be commenced by any person: (3) to redress the deprivation, under color of any state law, statute, ordinance, regulation, custom or usage, of any right, privilege, or immunity secured by the Constitution of the United States or by any act of congress providing for equal rights of citizens or of all persons within the jurisdictions of the United States;
>
> (4) to recover damages or to secure equitable or other relief under any act of congress providing for the protection of civil rights, including the right to vote."

42 U.S.C.A. Section 1983 and 1988

> "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any state or territory, subjects or causes to be subjected, any citizen of the United States or other persons within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."
>
> "The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this chapter and Title 18, for the protection of all

civil rights, and for their vindiction, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and furnish offenses against law, the common law as modified and changed by the Constitution and statutes of the states wherein the court having jurisdiction of such civil or criminal cases held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and if it is of a criminal nature, in the infliction of punishment on the parties found guilty."

West La. Rev. Stat. Ann. Sections 33:1221(a) and (b) West Supp. 1977:

"A. Except as hereinafter provided in subsection B of this section, every parish governing authority in Louisiana organized under the police jury system of government, shall by ordinance, establish the size of their bodies provided that no police jury shall have less than five members nor more than fifteen members, or the number of members authorized for that jury on or before May 13, 1974, whichever is greater; provided, that parishes with a population of 10,000 persons or less may establish the size of the body and not less than three members. Police jurors shall be elected at the state general election and shall serve for terms of

four years each. The action of any police jury adding members within the limits specified above prior to the effective date of this act is hereby ratified."

"B. Notwithstanding the provisions of subsection A of this section, every parish governing authority in Louisiana organized under the police jury system of government in a parish having a population of between 10,000 and 115,000 inhabitants according to the latest federal census may increase the number of members serving on the police jury provided, however, that each member serving on such a police jury shall represent as nearly as possible an equal number of persons."

STATEMENT OF THE CASE

This suit is just the latest chapter in the lengthy series of litigations involving the reapportionment of the Rapides Parish Police Jury. This action was brought in March of 1976, shortly after the police jury elections of 1975. The plaintiffs in this suit brought a class action under 42 U.S.C. Section 1983 and after a trial, the district court found that the apportionment scheme used to select parish school board and police jury members which had been instituted by the federal district court in 1971 in response to an earlier suit, could not legally be maintained. The trial judge ordered that both bodies be elected from 9 single member districts. The existing police jury and school board members were to remain in office until the next scheduled elections. For the school board, those elections, delayed pending the resolution of the suit, will occur this summer. The police jury election is not scheduled until 1980. The plaintiffs and the police

jury appealed; the school board did not. The Fifth Circuit firmed the district court's holding but modified the relief in that they ordered new elections for the police jury to be held as soon as practicable. The defendants, the Rapides Parish Police Jury and several individual members thereof, have filed this petition for certiorari and for a stay of proceedings pending a decision by this court.

In order to fully understand the posture of this case, it is necessary to discuss the lengthy and confusing history of reapportionment of the Rapides Parish Police Jury.

Rapides Parish is located in central Louisiana and had a population of 118,000 in 1970. Approximately 28% of that population were black; 72% were white. Alexandria, the parish seat, is the only large town in the parish. Most of the black population is concentrated in or around Alexandria.

Rapides Parish is governed by a police jury, a Louisiana local governing body similar to a county commission. This body acts as the parish legislature, but also historically, has exercised various administrative functions such as the maintenance and construction of roads, bridges and public buildings. Historically, the basic territorial, political subdivision in Rapides Parish has been the ward. The parish is divided into eleven wards and before 1968, one police juror was elected from each ward for a term of four years, with additional jurors provided for parishes in excess of 50,000 population. In 1968, suit was filed against the police jury charging that the apportionment violated the one man, one vote doctrine.

On July 26, 1971, after lengthy litigation, the District Court for the Western District of Louisiana rendered judg-

ment in the suit entitled "LeBlanc, et al. v. Rapides Parish Police Jury, et al." Number 13,713 of its Docket, ordering the reapportionment of the parish jury and school board. At that time, these bodies were admittedly in violation of the "one man, one vote doctrine" and to comply, the parish was divided into one single and three multi-member districts, each body would contain an elected membership of 18.

District "A" under the LeBlanc Reapportionment Plan implemented by the district court was an urban area composed of Wards 1 and 8 with a population of 64,649 and was to elect 10 members to each body. District "B" was composed of Wards 9, 10 and 11 with a population of 33,300 and elected 5 members to each body. District "C" was composed of Wards 2, 3, 4, and 6 with a population of 14,073 and elected 2 members to each body. District "D" was composed of Wards 5 and 7 and contained a population of 6,236 and elected 1 member to each body. District "A" contained a substantial black population in that 42% of the Ward 1 population and 37% of the District "A" (Wards 1 and 8) were black. No black candidate has ever been elected to serve as a member of the parish police jury under the LeBlanc plan.

In 1973, the United States sued to set aside the LeBlanc Plan. The government contended that it was invalid because it lacked the approval of the Attorney General, as required by Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1975(c) (1970) and that the plan violated the Fifteenth Amendment rights of the black citizens of the parish. The district court held that Section 5 of the Act did not apply to plans submitted in response to court orders. *United States v. Rapides Parish School Board,* Number 19209, Western District of Louisiana October 25, 1973.

On July 17, 1973, a group of blacks and whites filed a class action complaint in the Federal District Court for the Western District of Louisiana seeking reapportionment of the Rapides Parish Police Jury and Rapides Parish School Board. Their demand was based on allegations that the reapportionment plan then in existence previously imposed by the district court three years earlier, violated the "one man, one vote" concept and diluted the voting strength of the black population in the parish. This action known as the "Bradas suit" was tried and the trial judge found that the LeBlanc Plan was in violation of the Fourteenth and Fifteenth Amendments and implemented the 9 single member district plan. *Bradas v. Rapides Parish Police Jury*, W.D. La. 376 F. Supp. 690 (1974). The district court in the Bradas suit further ordered that all members of the police jury stand for election at the next regular primary election to be held in August of 1974 and at the next general election in November of 1974.

The defendants filed a motion for a new trial which was denied and the defendants thereafter requested that the enforcement of the judgment be stayed pending disposition on appeal to the Fifth Circuit which was likewise denied. The defendants then sought a stay from the United States Court of Appeals for the Fifth Circuit and the United States Supreme Court which was denied. The defendants then appealed the Bradas suit to the United States Court of Appeals for the Fifth Circuit and on February 14, 1975, after elections for the police jury under the court imposed 9 single member district plan had been held, the Fifth Circuit reversed the judgment of the district court and remanded the case to the district court with directions. *Bradas v. Rapides Parish Police Jury*, 508 F.2d 1109 5th Cir. (1975).

On remand, the district court approved a settlement entered to by the sitting 9 member bodies, under which they would continue as 9 member groups indefinitely. The Court of Appeals for the Fifth Circuit granted a writ of mandamus and ordered the judge to withdraw his approval of this settlement. The LeBlanc Plan was reinstituted in September of 1975. In December, elections for the 18 member police jury were held. Two black incumbents from the 9 member jury lost and no other black candidates won.

On April 2, 1976, the present suit was filed and the district court rendered judgment in July of 1976. Both plaintiffs and defendants appealed to the Court of Appeals for the Fifth Circuit. The school board has not appealed. The Fifth Circuit rendered judgment on November 17, 1977 affirming the district court but modifying the remedy.

REASONS FOR GRANTING THE WRIT

The decision of the district court and the Court of Appeals below is in error and is in direct conflict with this court's pronouncements in *Sixty-Seventh Minnesota Senate v. Beens*, 406 U.S. 187; 92 S.Ct. 1477 (1972).

It is most important to recognize, at the outset, that at no time in the "extended story of reapportionment in Rapides Parish" has any party ever requested or sought the implementation of a 9 single member district plan. The 9 member plan was a creation of the district court in another suit involving the reapportionment of Rapides Parish, *Bradas v. Rapides Parish Police Jury*, 376 F. Supp. 690 W.D. La. (1974); reversed 508 F. 2d 1109 5th Cir. (1975).

In the *Bradas* case, *supra.*, the plaintiffs requested an 18

single member district plan. After the hearing in that case, the district judge requested that the parties submit plans of apportionment. The defendants, police jury, realizing that the record contained no proof whatsoever of the necessary allegations to sustain the plaintiffs' burden of proof under the principles announced by this court in *White v. Register*, 412 U.S. 755; 92 S. Ct. 2332 (1973) and the Fifth Circuit's holding in *Zimmer v. McKeithen*, 485 F.2d 1297 5th Cir. (1973), submitted the plan under which they were operating, the LeBlanc multi-member district plan.

The district court in *Bradas, supra.*, rejected all plans and implemented the 9 single member plan. The district judge in that case felt he could not draft an acceptable 18 single member plan, although he consulted no one specifically about formulating an 18 single member plan.

The defendant police jury appealed the decision of the district court in Bradas and alleged three grounds for reversal: (1) a complete absence of any violation of the constitutional standards governing the dilution of minority voting strength in the record; (2) the question of res judicata based on the district court's dismissal of the suit brought by the United States alleging a violation of the rights of the black minority less than a year previous; (3) the reduction of the size of the police jury from 18 to 9 members.

The Court of Appeals reversed on the first ground and did not reach the other two allegations of error. *Bradas v. Rapides Parish Police Jury, et al.*, 508 F. 2d 1109 5th Cir. (1975). It is from that case, the *Bradas* suit, that the district court went to implement the 9 single member district plan which he implemented in the instant case.

It is the instant suit, the impossibility of drafting an acceptable 18 single member plan as felt by the judge in *Bradas* was proved to be a fallacy in view of the fact that in the instant case, the plaintiffs introduced and filed in evidence an acceptable 18 single member plan with supporting documentation.

There has never been a hearing of any kind to determine the practicability of implementing an 18 single member district plan, nor has there ever been any statistical documentation of the 9 single member plan implemented in *Bradas* and reimplemented in this case.

There has never been any showing that a reduction of the membership of the police jury was justifed to achieve the goals desired by the district court.

In this court's decision, *Sixty-Seventh Minnesota v. Beens, supra*, a district court of three judges drastically changed the number of members of the Minnesota Legislature by reducing the Senate from 67 members to 35 and reducing the House from 135 members to 105 members.

In reversing the three judge panel decision as "an unjustified exercise of the federal judicial power, not required by the constitution," this court recognized "that remedial powers of an equity court must be adequate to the task, but are not unlimited." 406 U.S. at 199· 92 Sup. Ct. at 1485.

This court condemned such "radical surgery in reapportionment" by stating:

> "There are cases where judicial reapportionment has effectuated minor changes in a legislature size.

Nearly all those cases reflect an increase or decrease of only a few seats and at most, have appeared to have been justified by state constitutional demand, agreement of the parties, the observance of geographical boundaries, or mathematical convenience. We do not disprove a court imposed minor variation from a state prescribed figure when the change has shown to be necessary to meet constitutional requirements. . .but to slash a state senate size almost in half and a state house size by approximately one-fourth is to make more than a mere minor variation. If a change of that extent were acceptable, so too, would be a federal court's cutting for increasing size by 75% or 90% or, indeed, by prescribing a unicameral legislature for a state that has always followed the bi-cameral precedent." 406 U.S. at 198-199; 92 S.Ct. at 1484-1485.

This court's opinion in *Beens, supra.* states that there would have been no constitutional problem to the district court's reducing the representatives by a very small number, and it goes on to cite a number of cases in which legislature were reduced very slightly. See footnote 10, 406 U.S. at 199; 92 S. Ct. at 1485. *Beens* clearly recognizes that an abuse of the trial court's authority will not be countenanced, and likewise, recognized the right of the state or local governing body, as opposed to that of the district court, to determine its own size. The decision states:

> "Our ruling here, of course, is no expression of opinion on our part as to what is the desirable way of legislative size for the State of Minnesota or for

> any other state. It may well be that 67 senators and 135 representatives make a legislature of unwieldy size. That is a matter of state policy. We are certainly not equipped, nor is it our function and task to effectuate a policy of that kind or to evaluate it once it has been determined by the state. Neither is it the function and task of the federal district court. Size is for the state to determine in the exercise of its wisdom and in the light of its awareness of the needs and desires of its people." 406 U.S. at 200; 92 S. Ct. at 1486.

The Court of Appeals in its opinion below seemingly tries to justify the action of the district judge in reducing the police jury from 18 to 9 members by stating that such a reduction is consistent with the announced state policy of Louisiana. They cite La. Stat. Ann. 33:1221 (West. Supp. 1977) as authority for that proposition. This conclusion by the Court of Appeals is patently in error. The cited statute reads in pertinent part as follows:

> "A. Except as hereinafter provided in subsection B of this section, every parish governing authority in Louisiana organized under the police jury system of government, shall be ordinance, establish the size of their bodies provided that no police jury shall have less than 5 members nor more than 15 members, or the number of members authorized for that jury on or before May 13, 1974, whichever is greater; provided that parishes with a population of 10,000 persons or less may establish the size of the body at not less than 3 members. Police jurors shall be elected at the state gen-

eral election and shall serve for terms of 4 years each. The action of any police jury adding members within the limits specified above prior to the effective date of this act is hereby ratified.

B. Notwithstanding the provisions of subsection A of this section, every parish governing authority in Louisiana organized under the police jury system of government in a parish having a population of between 10,000 and 115,000 inhabitatns according to the latest federal census may increase the number of members serving on the jury provided however that such members serving on such police jury shall represent nearly as possible in equal number of persons."

On May 13, 1974, the number of police jurors in Rapides Parish was 18. Historically, the number of jurors in the parish had been between 15 and 18. Therefore, under the language of the above quoted statute, (--- or the number of members authorized for that jury on or before May 13, 1974 whichever is greater---) the policy insofar as the police jury of Rapides Parish is concerned is a police jury of 18 members.

The opinion of the Fifth Circuit in their affirmance of the district court sets a serious precedent that will affect every public body in the Fifth Circuit when a district court an now reduce the size of a police jury to 50% without any showing that such a reduction was necessary.

The district court exceeded its authority in this case and could have more than adequately settled all constitutional questions without the necessity of such a serious reduction in membership. If this opinion is allowed to stand, then, in

applicant's opinion, a district court in the Fifth Circuit could easily and unfettered reduce a body by 75% or 90% and the fears of this court in *Beens, supra.*, will become a reality.

Applicant submits that the apparent unjustified reduction of a public body by 50% warrants the granting of certiorari to review the judgments below.

REASONS FOR GRANTING A STAY OF PROCEEDINGS

Applicants request that this court grant a stay of proceedings and stay the mandates of the Fifth Circuit Court of Appeals in their opinion of November 17, 1977 for the following reasons:

At page 714 of its November 17, 1977 opinion, the Fifth Circuit ordered the district judge to

> "Order police jury elections under a legal apportionment plan as soon as reasonably practical. At oral argument, we were informed that the school board elections are scheduled for next summer. The extra expense to the parish of a police jury election at that time would not be great. If the district court considers it practicable, it would seem reasonable to hold the police jury elections at the same time as the school board elections."

The district court has entered judgment on March 20, 1978 ordering elections for the jury to be held in accordance with Louisiana law. Under Louisiana law, the qualifying for such elections begins on the second Monday in July of 1978 and closes the following Friday. The primary election for

police jury would then be held on the third Saturday in September and the general election would be on the first Tuesday after the first Monday in November 1978.

The district court's judgment is attached to the Appendix hereto.

In all probability, the scheduled qualification period and the elections will have elapsed by the time this court acts on this petition for certiorari. That would cause an irrevocable injury to the applicants in that the offices to which they were duly elected would be vacated. This could lead to serious confusion as has occurred in the past when the elections were held and the decision of the district court was reversed on appeal.

For these reasons, this court should stay the mandate of the Court of Appeals directed to the district court below until such time as this court has an opportunity to act on this petition for certiorari.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the Fifth Circuit and this court should stay the mandates of the Court of Appeals in this matter until such time as this court has an opportunity to act on this petition for certiorari.

Respectfully Submitted,

GRAVEL, ROY & BURNES

By:
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ORDER

PREMISES CONSIDERED,

IT IS ORDERED that all proceedings in this matter and the mandate of the Fifth Circuit Court of Appeals as set forth in their November 17, 1977 opinion be stayed until the further orders of this court.

This order signed in the City of Washington, District of Columbia, on the day of , 1978.

JUSTICE - UNITED STATES
SUPREME COURT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing Petition for Writ of Certiorari has been served upon the following persons by placing a copy of said petition in the mail, postage prepaid:

Mr. Stanley A. Halpin, Jr.
806 Perdido Street, Suite 401
New Orleans, Louisiana 70112

Mr. John F. Ward, Jr.
770 North Street
Baton Rouge, Louisiana 70802

Mr. Gerald W. Jones
Mr. John P. MacCoon
Department of Justice
Washington, D.C. 20530

Alexandria, Louisiana this 17th day of April, 1978.

JAMES J. BRADY

APPENDIX A - ORDER DENYING PETITION FOR REHEARING

United States Court of Appeals
Fifth Circuit

Office of the Clerk — 600 Camp Street
Edward W. Wadsworth — New Orleans, La. 70130
Clerk

February 3, 1978

TO ALL PARTIES LISTED BELOW-

NO. 76-4176 - THOMAS R. PARNELL, ET AL. v.
RAPIDES PARISH SCHOOL BOARD,
ET AL. v. TERRY L. FARRAR, ET AL.

Dear Counsel:

This is to advise that an order has this day been entered denying the petition ( ) for rehearing,** and no member of the panel nor Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Local Fifth Circuit Rule 12) the petition ( ) for rehearing en banc has also been denied.

See Rule 41, Federal Rules of Appellate Procedure for issuance and stay of the mandate.

*On behalf of appellees, Rapides Parish School Board.

Very truly yours,

EDWARD W. WADSWORTH,
Clerk

By S/ Brenda M. Hauck
Deputy Clerk

bh

cc: Mr. Stanley A. Halpin, Jr.
Mr. John C. Hoyle
Mr. James J. Brady

APPENDIX B - OPINION OF FIFTH CIRCUIT COURT OF APPEALS

Thomas R. PARNELL et al., Plaintiffs-Appellants-Cross Appellees,

v.

RAPIDES PARISH SCHOOL BOARD et al.,
Defendants-Appellees-Cross Appellants

v.

Terry L. FARRAR et al., Intervenors

No. 76-4176

United States Court of Appeals, Fifth Circuit

Nov. 17, 1977

Class action was brought for declaratory and injunctive relief against court-ordered reapportionment plan for selection of parish police jury and school board members. The United States District Court for the Western District of Louisiana at Alexandria, Edwin F. Hunter, Jr., J., 425 F. Supp. 399, found that apportionment scheme used to select parish school board and police jury members could not legally be maintained and ordered that both bodies be elected from mine single-member districts, with existing boards to remain in office until next scheduled elections, and plaintiffs and police jury appealed. The Court of Appeals, Wisdom, Circuit Judge, held that: (1) district judge's holdings that previous multimember plan constituted inappropriate

judicial remedy and impermissibly diluted votes of black residents of parish were not barred by res judicata and would be affirmed, but (2) district judge should order police jury election, which was next scheduled for 1980, under legal apportionment plan as soon as reasonably practical and (3) apportionment plan, which had been ordered by the district court and which achieved low population deviation, would be affirmed.

Affirmed in part, modified in part and remanded.

1. Counties 38
Schools and School District 48

In absence of unique factors in parish justifying multimember districts, reapportionment plan under which wards of parish were divided into single-member and multimember districts for purpose of electing parish police jury and school board members constituted inappropraite judicial remedy.

2. Counties 38
Schools and School Districts 48

Reapportionment plan under which parish wards were divided into single-member and multimember districts for purpose of electing parish police boards and school board members impermissibly diluted votes of black residents of parish. U.S.C.A. Const. Amends. 14, 15.

3. Judgment 585(5)

Where law had changed significantly, res judicata did not bar holding that court-ordered reapportionment plan for selection of parish police jury and school board members

constituted inappropriate judicial remedy nor did res judicata bar assertion of claim concerning dilution of black voting strength, even though same claim made by similar class had been previously rejected, since to bind forever class members to deprivation of constitutional rights because of previous failure of proof would be unjust.

4. Judgment 585(5)

Faced with changing law, courts hearing questions of constitutional right cannot be limited by res judicata.

5. Counties 38

While it was unfortunate that incumbent members of police jury, elected after court order, had to have their terms cut short and that voters of parish had to face another election, it would be far more unfortunate for exclusion of black Americans from fair participation in parish politics to continue any longer than necessary, and thus district judge, who had found that reapportionment plan constituted impermissible scheme and also impermissibly diluted votes of black parish residents, should order police jury election under legal apportionment plan as soon as reasonably practical rather than waiting for next scheduled election in 1980.

6. Counties 38

Apportionment plan, which provided for nine-member police jury, which achieved average population deviation of 0.72% and maximum deviation of 2.2%, while at the same time preserving to a very substantial degree traditional ward lines and geographical boundaries of parish, thus promoting continuity and ease in transition from old plan to new, and

which fell within limits set by Louisiana statute requiring that police jury have between five and 15 members or any other number in effect before May 1974, would be affirmed. LSA-R.S. 33:1221.

Appeals from the United States District Court for the Western District of Louisiana.

Before WISDOM, GEWIN and AINSWORTH, Circuit Judges.

WISDOM, Circuit Judge:

This is another chapter in the extended story of reapportionment in Rapides Parish, Louisiana. In this class action brought under 42 U.S.C. §1983, the district court found that the apportionment scheme used to select parish school board and police jury members, instituted by a federal court in 1971 in response to an earlier suit, could not legally be maintained. The trial judge ordered that both bodies be elected from nine single-member districts. The existing boards were to remain in office until the next scheduled elections. For the school board, those elections, delayed pending the resolution of the suit, will occur next summer. The police jury election is not scheduled until 1980. The plaintiffs and the police jury appealed; the school board did not. We affirm the district court's holding but modify the remedy ordered.

I.

Rapides Parish, located in central Louisiana, had a popu-

lation of 118,000 in 1970. Approximately 28 percent of that population were black; 72 percent were white. Alexandria, the parish seat, is the only large town in the parish. Most of the black population is concentrated in or around Alexandria.

Rapides Parish is governed by a police jury, a Louisiana local governing body similar to a county commission. This body acts as the parish legislature, but also historically has exercised various administrative functions such as the maintenance and construction of roads,bridges, and public buildings. See La. Const. Art. 14, Sec. 3; La. Rev. Stat. Ann. § 33:1221, *et seq.* (West Supp. 1977). The parish is divided into 11 wards. Until 1968 one police juror was elected from each ward. The wards varied tremendously in population. Thus, in 1970, Wards One and Eight had a combined population of 64,659, while Wards Two, Three, Four, and Six had a combined population of only 14,073.

In 1968 suit was filed against the police jury, charging that the apportionment violated the one-man one-vote doctrine. After extensive litigation the district court approved a plan submitted by the local authorities. *LeBlanc v. Rapides Parish Police Jury*, July 26, 1971, W.D. La., No. 13,715. The parish was divided into four districts, each composed of a combination of wards. District A, composed of Wards One and Eight, elected ten members of the police jury and of the school board. Ward One consisted of Alexandria, Ward Eight of an area near Alexandria. District A was 37 percent black by population. It contained 72 percent of the black population of the entire parish. District B elected five members, District C two members, and District D. one member. Those three districts were predominantly white.

In 1973 the United States sued to set aside the *LeBlanc* plan. The government contended that it was invalid because it lacked the approval of the Attorney General, as required by Section 5 of the Voting Rights Act of 1965, 42 U.S.C. §1973c (1970). The district court held that Section 5 of the Act did not apply to plans submitted in response to court orders. *United States v. Rapides Parish School Board*, Oct. 25, 1973, W.D. La., No. 19,209.

Also in 1973 a group of residents filed a class action, seeking a change in the *LeBlanc* plan. The plaintiffs charged that the *LeBlanc* plan diluted black voting strength in violation of the Fourteenth and Fifteenth Amendments, and also violated the one-man one-vote rule. In May 1974 the district court struck down the *LeBlanc* plan. *Bradas v. Rapides Parish Police Jury*, 1974, W.D. La., 376 F.Supp. 690. The trial judge found that District A concentrated black strength in a multi-member district, making it difficult, if not impossible, for that strength to elect any officials. The judge ordered that single-member districts be substituted. All four plans submitted by the parites were "either incomplete and unsupported, or were constitutionally unacceptable". 376 F.Supp. at 694. The trial judge then drafted his own plan for nine single-member districts. Elections under that plan were held for both bodies in late 1974. Two blacks were elected to the school board, and two to the police jury.

The defendants appealed. In February 1975 this Court reversed the trial court's decision. *Bradas v. Rapides Parish Police Jury*, 5 Cir. 1975, 508 F.2d 1109. The Court concluded that the plaintiffs had failed to carry their burden of proof under the standards governing dilution of minority

voting strength.[1] The district court's order was vacated, and that court was required to reinstitute the *LeBlanc* plan in time for the next election. The Court, however, declined to disturb the tenure of the recently-elected school board and police jury of nine members each.

On remand the district court approved a settlement entered into by the sitting nine member bodies, under which they would continue as nine member groups indefinitely. The Court of Appeals granted a writ of mandamus and ordered the judge to withdraw his approval of this settlement. The *LeBlanc* plan was reinstituted in September 1975. In December elections for the 18 member police jury were held. The two black incumbents from the nine member jury lost, and no other black candidates won.

On April 2, 1976, the present suit was filed.[2] Three black residents of the parish filed it as a class action on behalf of all the black residents. They sued the police jury, the school board, and all the individual members of each. They charged that the *LeBlanc* plan violated the Fourteenth and Fifteenth Amendments by impermissibly diluting their voting strength, and by deviating from the one-man one-vote principle. Elections to replace the sitting nine member school board with the *LeBlanc* eighteen member school board were scheduled for August 14. The plaintiffs and the school board sought a preliminary injunction. The district judge stated that, in light

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1. In *Bradas* the appellants also raised the questions of res judicata and the size of the police jury that are raised here. Because the Court found that the plaintiffs had not carried their burden of proof below, these questions were never reached. 508 F.2d 1111-12.

2. The instant case was tried by Senior District Judge Hunter. Both the previous cases, *LeBlanc* and *Bradas*, were tried by Judge, now Chief Judge, Scott.

of *East Carroll Parish School Board v. Marshall*, 1976, 424 U. S. 636, 96 S.Ct. 1083, 47 L.Ed.2d 296 *aff'g on other grounds, Zimmer v. McKeithen*, 5 Cir. 1973 (en banc), 485 F.2d 1297, the plaintiffs would probably succeed on the merits. Nevertheless, he felt bound by the writ of mandamus from this Court and would not grant the requested injunction. An appeal followed, and the district judge was freed from the effects of the writ of mandamus. The judge then enjoined the election.

The district court issued its opinion on September 30, 1976. *Parnell v. Rapides Parish School Board*, 1976, W.D. La., 425 F.Supp. 399. The court held that the *LeBlanc* plan was invalid on two independent grounds. First, it violated the limits of judicial discretion in formulating reapportionment plans by permitting multi-member districts. Second, the plan had the effect of diluting black voting strength. The judge ordered that the nine member plan, developed by Judge Scott in the *Bradas* case, be implemented. The school board elections, enjoined by the court since July 1976, were to be conducted under that plan. The police jury was also to be elected under that plan, but not until the next regularly scheduled election in 1980.

The plaintiffs appealed, asserting that the judge erred by not ordering an immediate police jury election. The police jury, and seventeen of its eighteen members, cross-appealed, asserting that the *LeBlanc* plan was valid, that this suit was barred by res judicata, and that the district court abused its discretion in reducing the size of the police jury. The school board did not appeal.

II.

[1] The district court's first ground for its decision was that intervening decisions have revealed the *LeBlanc* plan to be an inappropriate judicial remedy. The district judge relied upon the Supreme Court's decision in *East Carroll Parish School Board v. Marshall*, 1976, 424 U.S. 636, 96 S.Ct. 1083, 47 L.Ed. 2d 296. The Court's per curiam opinion stated:

> [W]hen the United States district courts are put to the task of fashioning reapportionment plans to supplant concededly invalid state legislation, single-member districts are to be preferred absent unusual circumstances. [citations omitted]. As the en banc opinion of the Court of Appeals amply demonstrates, no special circumstances here dictate the use of multi-member districts. Thus, we hold that in shaping remedial relief the District Court abused its discretion in not initially ordering a single-member reapportionment plan.

424 U.S. at 639-40, 96 S.Ct. at 1085. The Court recently reiterated this position in *Connor v. Finch*, 1977, U.S. , , 97 S.Ct. 1828, 1834, 52 L.Ed.2d 465, 474, holding that a multi-member plan should be ordered by a court only where it "articulates . . . 'a singular combination of unique factors' that justifies a difference". This Court has recognized the effect of *East Carroll Parish* on the limits of district court power. In *Wallace v. House*, 5 Cir. 1976, 538 F.2d 1138, 1140-41, on *remand from*, 1976, 425 U.S. 947, 96 S.Ct. 1721, 48 L.Ed.2d 191 *vacating*, 5 Cir. 1975, 515 F.2d 619, we voided a district court plan which provided at-large councilmanic elections.

The defendants did not argue to the district court that unique factors existed in Rapides Parish to justify a multi-member district. Nor did they so argue here. The clear directive of the Supreme Court must be followed, and the district court's holding must be affirmed.

[2] We also affirm as to the trial court's second ground, that the *LeBlanc* plan impermissibly diluted the votes of the black residents of the parish. In dealing with charges of vote dilution, our starting point must be this Court's definitive opinion in *Zimmer v. McKeithen*, 5 Cir. 1973, 485 F.2d 1297, *aff'd on other grounds sub nom. East Carroll Parish School Board v. Marshall*, 1976, 424 U.S. 636 96 S.Ct. 1083, 47 L.Ed.2d 296. *Zimmer* pointed out that statistics alone could not prove impermissible dilution of minority voting power. Instead,

> "where the petitioner can demonstrate that 'its members had less opportunity than did other residents in the district to participate in the political processes and to elect legislators of their choice' . . . such districting schemes are constitutionally infirm." [citations omitted]

485 F.2d at 1304-15. The Court listed a number of factors which were to be considered. Among them were the motivation for the districting scheme, lack of minority group access to the process of slating candidates, unresponsiveness of legislators to minority interests, and the strength of the state interests served by multi-member districts. Other factors were the existence of past discrimination with continuing effects of political participating, the size of the districts, majority vote requirements, anti-single shot voting provisions, and the existence of a requirement that candidates run from particular geographic subdivisions. 485 F.2d at 1305.

Judge Hunter, the trial judge, took extensive evidence on the impact of the multi-member districts on black participation in Rapides Parish politics. He considered the population distribution in the parish, the legacy of discrimination, the probability of racial bloc voting, the structure of the electoral process, and the outcome of past elections. The judge concluded:

> "The ultimate question is, of course, how these formal structures (multi-member districts, majority run-off), informal structures (such as the one-party system), and political context (history of racial discrimination, etc.) operate in combination . . . The experiences of blacks running in the multi-member districts under the *LeBlanc* Plan show that these factors, particularly in combination with racial bloc voting, effectively deny blacks access to the political process. The predictable outcome is that blacks are consistently defeated in the multi-member districts. This is no accident, nor is [it] the mere function of losing fair elections. Rather, given the totality of circumstances of the political context which includes bloc voting, a one-party system, and the vestiges of a long history of racial discrimination, the *LeBlanc* plan clearly stacks the decks against blacks by the use of multi-member districts with a majority run-off requirement."

425 F.Supp. 399, 406. The case presented here is much stronger than that rejected in *Bradas*. Under the *Zimmer* standard these facts constituted a compelling case. We cannot say that the finding was clearly erroneous.

On appeal the defendants did not mount a strong attack on the merits of the lower court's findings. Instead, they

concentrated on their position that the suit was barred by res judicata. Although we are aware of the importance of res judicata in preventing relitigation of controversies, we hold that this cause was not barred.

[3,4] The district court's first ground cannot be barred by a claim of res judicata. The law had changed significantly between the Court of Appeals decision in *Bradas* in February 1975 and the filing of this suit. The *East Carroll Parish* decision changed the relevant law. Had this Circuit considered judicially ordered single-member districts impermissible in all but extraordinary situations, the *Zimmer* decision would not have reached the constitutional issue.[3] Faced with changing law, courts hearing questions of constitutional right cannot be limited by res judicata. If they were, the Constitution would be applied differently in different locations. But "[t]he Constitution is not geared to patchwork geography. It tolerates no independent enclaves." *Christian v. Jemison*, 5 Cir. 1962, 303 F.2d 52, 55, *cert. denied*, 1962, 371 U.S. 920, 83 S.Ct. 287, 9 L.Ed. 2d 229. For this reason contentions that new reapportionment suits were barred have been rejected. *See Whitcomb v. Chavis*, 1971, 403 U.S. 124, 162-63, 91 S.Ct. 1858, 29 L.Ed.2d 363; *Moch v. East Baton Rouge School District* 5 Cir. 1977, 548 F.2d 594, *cert. denied*, 1977, U.S. , 98 S.Ct. , 53 L.Ed.2d .

Res judicata does not bar the plaintiffs' assertion of dilution of their voting strength Although the same claim, made by a similar class, was rejected by this Court for insufficient

3. A further distinction between the law before and after *East Carroll Parish* was pressed by the United States as amicus curiae below. *East Carroll Parish* involved a plan developed by the defendants and merely approved by the court. The previous cases in which the Supreme Court had stressed the importance of single-member districts in granting equitable relief had involved court-developed plans. In this case the *Le Blanc* plan was authored by the parties.

proof in *Bradas v. Rapides Parish Police Jury*, 5 Cir. 1975, 508 F.2d 1109, "it should be remembered that res judicata is a principle of public policy and should be applied so as to give rather than deny justice", *Dore v. Kleppe*, 5 Cir. 1975, 522 F.2d 1369, 1374. To bind forever class members to a deprivation of their constitutional rights because some class members failed to enter enough evidence to meet their burden of proof is unjust. That is particularly true in this case. The district judge, who had ordered the *LeBlanc* plan originally, was convinced by the *Bradas* plaintiffs; their only error was in not foreseeing that the reviewing court would be more skeptical. Res judicata cannot be allowed to yield such an unfair outcome.[4] Therefore, neither of the district court's holdings were barred, and both are affirmed.

III.

[5] The district court ordered that elections be held under the nine single-member district plan from *Bradas*. The school board election, delayed by the trial judge's preliminary injunction, is to be held next summer. The next scheduled police jury election is in 1980. We affirm as to the district court's apportionment plan, but must modify the timing of the new elections.

The plaintiff class in this case has waited long enough for fair admission to the political process. Before the Civil War blacks had no political rights. After the Civil War what rights they acquired were stripped away by several state-ordered

4.The problems of res judicata in "public law" actions have provoked some comment. *See* Note, Developments in the Law: Class Actions, 89 Harv.L.Rev. 1321, 1396-98 (1976); Note, Class Action Judgments and Mutuality of Estoppel, 43 Geo.Wash.L.Rev. 814, 818-20 (1975). See *generally* 1B Moore's Federal Practice ¶ 0.405 [11].

ploys. See *United States v. Louisiana*, 1963, E.D.La. (three judge court), 225 F.Supp. 353, *aff'd*, 380 U.S. 145, 85 S. Ct. 817, 13 L.Ed.2d 709. When the federal government, through judicial enforcement of the Constitution and executive enforcement of the Voting Rights Act of 1965, forced the admission of black men and women to politics, they still faced obstacles. In Rapides Parish, as in many parishes and counties, they had to contend with multi-member districts and an apportionment which denied them effective access to political representation. Only in the interim between the district court decision in *Bradas* and this Court's reversal of that decision have blacks been represented on the police jury.

It is unfortunate that the incumbent members of the police jury, elected after an order by this Court, must have their terms cut short; and that the voters of Rapides Parish must face another election. But it would be more unfortunate for the exclusion of black Americans from fair participation in Rapides Parish politics to continue any longer than necessary. The district judge should order police jury elections under a legal apportionment plan as soon as reasonably practicable. At oral argument we were informed that the school board elections are scheduled for next summer. The extra expense to the parish of a police jury election at that time would not be great.If the district court considers it practicable, it would seem reasonable to hold the police jury election at the same time as the school board election.

[6] We affirm the apportionment plan ordered by the district court. The *LeBlanc* plan provided for a police jury of eighteen members, the number previously elected in Rapides Parish. The district court adopted the nine member plan formulated by Judge Scott in *Bradas*. Judge Hunter found

that the *Bradas* plan met one-man one-vote requirements, gave minority groups a fair opportunity to participate, and was favored by the parties. 425 F.Supp. at 407. The *Bradas* plan achieved an average population deviation of 0.72 percent, and a maximum deviation of 2.2 percent. At the same time it preserved to a very substantial degree the traditional ward lines and geographical boundaries of the parish, thus promoting continuity and an ease in the transition from the old plan to the new. Judge Scott found that an eighteen member plan could not provide these benefits.

> Having experienced the difficulty, indeed the impossibility, of drafting a plan providing for eighteen single-member districts, and after considering numerous alternatives, we determined that the nine single-member district plan was the plan most consistent with the Fourteenth and Fifteenth Amendment principles. In reducing the membership of the School Board and the Police Jury, we are well aware of the holding of *Minnesota State Senate v. Beens*. .

376 F.Supp. at 693.

As Judge Scott noted, *Sixty-Seventh Minnesota State Senate v. Beens*, 1972, 406 U.S. 187, 92 S.Ct. 1477, 32 L.Ed. 2d 1, was not a barrier to his decision. In that case the district court had reduced the size of the Minnesota Senate from 67 members to 35. The size of the state senate was set by statute. It had consisted of 67 members since 1913, through two previous reapportionments. The Court held that district courts should "accommodate the relief ordered to the appropriate provisions of state statutes relating to the legislature's size insofar as is possible." 406 U.S. at 197, 92 S.Ct. at 1484. The Court recognized that minor changes in size were permissible, and that major changes might be necessary if "the number so prescribed [by the state] occasions

significant and invalidating population deviations." 406 U.S. at 199, 92 S.Ct. at 1485.

Judge Scott properly distinguished this case from *Beens*. First, the state interest is not as great. In *Beens* the state had maintained the senate at the same size, by statute, for almost sixty years. In this case the state does not mandate the size of the police juries in its parishes. Instead, the relevant statute only requires that the police jury have between five and fifteen members, or any other number which was in effect before May 1974. La.Rev.Stat.Ann. § 33:1221 (West Supp. 1977). The plan ordered by the district court fell well within the limits set by Louisiana's policy.

Second, the district judge in *Bradas* found that an adequate eighteen single-member district plan was impossible. As the number of districts increases, the percentage deviation created by a discrepancy of any given number of voters also increases. The nine member plan adopted by both judges has a remarkably low deviation. Its superiority to the eighteen member plans discussed by Judge Scott is a further important difference between this case and *Beens*. *Beens* does not bar this relief.

IV.

The road to a legal apportionment in Rapides Parish has been long and rocky. This decision should signal that the end is in sight. Police jury elections, under the nine member plan adopted by the district court, should be held as soon as reasonably practicable. Fair political participation for all the voters of Rapides Parish must be delayed no longer. The decision of the district court is affirmed in part, modified in part, and remanded for further proceedings not inconsistent with this opinion.

AFFIRMED IN PART, MODIFIED IN PART AND REMANDED.

APPENDIX B - MEMORANDUM OF DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA DIVISION

CIVIL ACTION NO. 760364

THOMAS R. PARNELL, ET AL.

VS.

RAPIDES PARISH SCHOOL BOARD, ET AL.

FOR PLAINTIFFS — Messrs.
Stanley A. Halpin, Jr.
344 Camp Street, Suite 1212
New Orleans, Louisiana 70130

FOR DEFENDANTS — James J. Brady
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P.O. Box 1792
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John F. Ward, Jr.
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FOR INTERVENORS — Richard B. Crowell
P.O. Box 330
Alexandria, Louisiana 71301

FOR THE GOVERNMENT — Gerald W. Jones
John P. MacCoon
Department of Justice
Washington, D.C. 20530

HUNTER, SENIOR JUDGE:

The history of litigation involving the reapportionment of the Rapides Parish Police Jury and School Board is set out in *Bradas v. Rapides Parish Police Jury*, 508 F. 2d 1109 (5th Cir. 1975), at 1110-1111. The reapportionment plans for the Rapides Parish Police Jury and School Board, challenged in the instant action under the Fourteenth and Fifteenth Amendments, were originally instituted and approved by a Federal Court in *LeBlanc v. Rapides Parish Police Jury*, Civil Action No. 13,715 (W.D. La., July 26, 1971).

The sequence of the litigation is pertinent:

(1) By judgment of July 26, 1971, in a prior suit entitled *LeBlanc, et al v. Rapides Parish Police Jury, et al*, Civil Action No. 13,715, the district court approved the LeBlanc Plan. The plan divided the eleven (11) wards of Rapides Parish into one single-member and three multi-member districts for the purpose of electing 18 officers to the Parish Police Jury, as well as to the Parish School Board.

(2) A year after implementation of *LeBlanc*, the United States instituted an action seeking to nullify the plan because it lacked prior approval of the Attorney General of the United States, pursuant to Section 5 of the Voting Rights Act of 1965.

(3) The district judge dismissed the suit, holding that Section 5 did not require prior approval of reapportionment plans submitted to a United States District Court in the trial of an adversary proceeding (United States v. Rapides Parish School Board, et al, Civil Action No. 19,209, W.D. La.,

October 25, 1973).

(4) Subsequently, ten parish citizens, both blacks and whites, brought suit attacking the LeBlanc Plan as violative of the one man-one vote rule. Plaintiffs charged also that the at-large voting scheme impermissibly diluted the votes of local blacks and asked for appropriate declaratory and inunctive relief.

(5) The District Court, in May of 1974, vacated its judgment of July 26, 1971, which had instituted *LeBlanc*. The court proceeded to implement its own reapportionment scheme which divided the parish into nine single member election districts. *Bradas v. Rapides Parish Police Jury*, 376 F.Supp. 390 (W.D. La., May 10, 1974). It did so only after rejecting four plans submitted jointly by the School Board and Police Jury, all of which were found to be either insufficiently prepared or constitutionally defective.

(6) On February 14, 1975, the United States Court of Appeals for the Fifth Circuit, in *Bradas v. Rapides Parish Police Jury*, 508 F. 2d 1105, vacated the district court order of May, 1974 order. The case was remanded with directions to reinstate *LeBlanc* prior to the next election for police jury and school board scheduled to be held in Rapides Parish.

7. Meanwhile, Judge Scott's single member district plan had been put into effect and two black members had been elected to the Rapides Parish Police Jury and two had been elected to the School Board.

8. The Court of Appeals decision stated:

> To prevent needless expense and confusion, the tenure in office of the present members of the Police Jury and School Board, elected under the 9 member plans of the May 10, 1974 judgment, shall not be disturbed in the interim.

9. On July 31, 1975, Judge Scott granted the application of the School Board, the Police Jury, and the plaintiffs for a compromise settlement of the Bradas case. The effect of this settlement was to keep in effect the nine single member district plan. Plaintiffs and both public bodies favored the plan.

(10) On August 8, 1975 the Court of Appeals granted a petition for a writ of mandamus, vacating and setting aside Judge Scott's approval of the compromise settlement. This order directed forthwith compliance with its mandate of February 13, 1975.

(11) On September 24, 1975, Judge Scott entered an order pursuant to the Fifth Circuit mandate. This resulted in once again activating the LeBlanc multimember district plan. Police jury elections were held, and the two black members of the Rapides Parish Police Jury elected under the single member plan ran as incumbents and were defeated. There are now no black members on theRapides Parish Police Jury.

(12) On April 2, 1976 the present suit was filed. LeBlanc is again under attack.

(13) A trial was held on the merits on July 12, 1976.

(14) At this stage, 18 members of the Police Jury had

been elected and were serving in that capacity. It must be emphasized that the Police Jury election was held pursuant to specific and precise court orders. The election of school board members was scheduled for August, 1976.

(15) Attorneys for plaintiffs and the incumbent school board (the 9-member board) requested a stay until the disposition of the present litigation.

(16) We declined to issue the stay order because of the Fifth Circuit's decision in *Bradas* and the mandamus of August 7, 1975. The reasons for the denial were set forth in a written opinion filed immediately after the conclusion of the July 12th hearing.

(17) On July 29, 1976 the Court of Appeals entered the following order:

> The order of the District Court denying an injunction is stayed pending appeal and the cause is remanded to the District Court for the entry of appropriate orders to effectuate a legal election under present facts and law, freed from the restraint of a prior mandamus entered by this Court.

(18) Upon receipt of the July 29, 1976 ruling we immediately granted the stay requested by plaintiffs.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. This is a class action pursuant to 42 U.S.C. §.1983 Plaintiffs seek a declaratory judgment, pursuant to 28 U.S. C. §2201, a preliminary injunction, a permanent injunction

and other appropriate relief to enjoin the deprivation under color of law, by the State of Louisiana and in particular the School Board and Police Jury of Rapides, Louisiana, of the rights, privileges and immunities of the plaintiffs and the class they represent, arising under the Constitution of the United States.

2. Plaintiffs Thomas R. Parnell, Granvel G. Metoyer, and Frazier Bell are black citizens of the United States and residents and registered voters of Rapides Parish, Louisiana.

3. The plaintiffs have standing to sue individually and properly sue as representatives of the class of black voters of Rapides Parish, Louisiana.

4. The Rapides Parish School Board is a legislative body charged with the operation of the public schools in Rapides Parish.

5. The Rapides Parish Police Jury is the legislative governing body of the Parish of Rapides, whose duties include the maintenance of roads, canals, drainage and other public services throughout the Parish including the operation of the Coliseum, operation of the Food Stamp program, and other functions for which the Police Jury appoints special commissions.

6. Defendant Edwin Edwards if Governor of the State of Louisiana and Defendant Wade O. Martin, now succeeded in office by Paul Hardy, is Secretary of State of Louisiana. These are nominal defendants who have certain duties with respect to the conduct of elections for the Rapides Parish Police Jury and School Board and are included for purposes

of relief only. An answer was filed on their behalf by the Attorney General of Louisiana, waiving appearance and praying that the court enter such judgment and orders as it determines are necessary and proper in view of the law and evidence controlling.

7. The United States was allowed to file a memorandum as *amicus curiae* which supported plaintiffs' position.

(8) To assure that all parties alleging an interest in this litigation would have notice and intervene at an early date without delay of these proceedings, this court issued an order on April 22, 1976 which was published in the local newspapers setting a time in which interventions would be considered.

(9) In response to this order certain individuals who were then police jurors-elect sought and were allowed intervention, and upon assuming office were made defendants herein.

(10) The plan challenged herein is a court-ordered plan instituted by this court in *LeBlanc v. Rapides Parish Police Jury*, C.A. No. 13,715 (W.D. La., July 26, 1971), hereinafter referred to as the *LeBlanc* plan.

(11) The LeBlanc plan was challenged as racially discriminatory under the standard of *White v. Regester*, 412 U.S. 755 (1973), invalidated, and a nine single-member district plan was substituted for it in *Bradas v. Rapides Parish Police Jury, et al*, 376 F.Supp. 690.[1]

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1. The chronology has been set forth in paragraphs 1-18.No useful purpose would be served by reiterating under these findings.

(12) The Supreme Court of the United States, in *East Carroll Parish School Board v. Marshall*, 1976, U.S. , 96 S.Ct. 1083, 47 L.Ed. 2d 296, defoliates "the political thicket in which we have been wandering for some years." *Wallace v. House* (5th Cir., Sept. 17, 1976). The law now is clear. In fashioning remedial districting schemes, federal district courts are to order single member plans, absent special circumstances.

(13) The term "special circumstances" is possessed of no talismanic significance. It merely represents the Supreme Court's recognition that a "singular combination of unique factors" may sometimes persuade a district court to conclude that the policies underlying the general preference for single member districts may be outweighed by grave defects of single member districting as applied to a particular case. *Wallace v. House*, supra.

(14) No showing of special circumstances has been made to justify such a holding in this case.

(15) Accordingly, plaintiffs must prevail as a matter of law on the proposition that the LeBlanc Plan is an impermissible scheme for a court ordered plan under the standards of *East Carroll*, supra, 96 S.Ct. at 1085, and *Wallace v. House*, supra.

(16) Cognizant of Justice Brandeis' well known principles of judicial self-restraint, see *Ashwander v. TVA*, 297 U.S. 288, 346-347 (1936) (Brandeis, J., concurring), which includes the principle that the Court should not decide a constitutional question where there is an alternative non-constitutional basis for disposing of the case, we find that the

interest of judicial economy and the need for a prompt final resolution of this case dictate that the Court also reach the constitutional question.

(17) Under the totality of the circumstances of the instant case, the LeBlanc plan with its large multi-member districts operates to minimize or cancel out the voting strength of the sizable black minority in Rapides Parish and operates to deny to them equal access to the political process under *White v. Regester*, 421 U.S. 755 (1973).

(18) Within District A reside 23,647 of the Parish's total black population of 32,882. Thus, 72% of the total black population of the Parish resides within this 10-member district. (See plaintiffs' Exh. 2, 1970 Census, Louisiana General Population Characteristics.)

(19) Examination of plaintiffs' Exh. 1, 1970 Census for Rapides Parish by enumeration districts and part of plaintiffs' Exhibit 11, Census Enumeration District maps for the Parish of Rapides, reveals that in fact this large black population contained within District A is exceedingly compact and is concentrated in an area along the railroad tracks lying in the northwestern sector of the City of Alexandria and adjacent areas immediately outside of the City.

(20) There has been a continuing history of state and local official racial discrimination in Rapides Parish which, prior to 1954 has extended to deprivation of the rights of blacks to register and vote and to participate in a democratic process.

(21) We take judicial notice of the school desegregation case against the Rapides Parish School Board and note, as was

attested to by plaintiffs' witnesses, that the schools were historically segregated according to race. The schools were desegregated step-by-step with each step being compelled by a specific order of the federal courts. Under freedom of choice in the late sixties and early seventies, only a handful of blacks attended the formerly all-white schools and it was not until imposition of a court-ordered zoning plan that a reasonably substantial number of blacks were in formerly all-white schools and it was not until imposition of a court-ordered zoning plan that a reasonably substantial number of blacks were in formerly all-white schools and vice versa. The litigation continues to this day.

(22) The court notes that there were a number of statewide obstacles to black registration and voting which were in operation until declared invalid in *Louisiana v. United States*, 380 U.S. 145 (1965). Until invalidated by the Voting Rights Act of 1965, a literacy and constitutional interpretation test was in force.

(23) The effects of these obstacles can be seen from plaintiffs' Exhibit 9, Louisiana Board of Registration Report, showing black and white registration at six-month intervals since 1958. This exhibit shows that as of November, 1964, there was 36,197 whites registered in the Parish and by November, 1967 there were 44,336 whites registered--an increase of only 10% from 1964 to 1967. In November, 1964, only 3,829 blacks were registered, whereas in November, 1967, 8,675 blacks were registered--an increase of 127%. From these figures it can also be calculated that, for example, in November of 1964 blacks comprised only 11% of the total Parish electorate, whereas in 1967 they comprised 20% of that electorate.

(24) There are debilitating vestiges of the past which preclude blacks from participating on an equal basis in large multi-member districts. Plaintiffs' expert witness, Dr. Gordon Henderson, analyzed voting returns, particularly from the recent Police Jury elections under the LeBlanc Plan (see plaintiffs' Exhs. 4-7, and 14) together with registration figures by race and by precincts,and determined that statistically there was a 98% probability of bloc voting among racial lines where a black candidate opposed a white candidate in Rapides Parish. Dr. Henderson did this analysis with the assistance of a computer, running two independent statistical analyses--the Pearson Correlation analysis and a retrogression analysis which statistically allows prediction from evenly mixed precincts. The returns, of course, show that black candidates occasionally receive some votes in 100% white precincts, but this is not particularly significant when the returns are viewed as a whole and especially are not significant in view of the computer analsys which takes all of the data into account, and using accepted statistical methods shows the level of bloc voting present here.

(25) For all practical purposes, historically Rapides Parish is a one-party Parish, with nomination by the Democrat Party tantamount to election. Neither the Party nor a dominant white slating organization has nominated, endorsed or slated any blacks.

(26) The constitutional insufficiency of an at-large or multi-member district arrangement is not demonstrated solely by showing that the cognizable minority has not been able to elect officials in the multi-member district in mathematical proportion to its voting potential. *White v. Regester,* 412 U.S. 755, 766 (1973); *Whitcomb v. Chavis,* 403 U.S.

124, 149; *Zimmer v. McKeithen,* supra, at 1305. Instead, to demonstrate unconstitutionality:

> * * *Plaintiffs' burden is to produce evidence to support findings that the political processes leading to nomination and election were not equally open to participation by the group in question -- that its members had less opportunity than others in the district to participate in the political process and to elect legislators of their choice. *Whitcomb v. Chavis,* supra., at 149-150. *White v. Regester,* supra., at 766.

(27) Whether a particular multi-member or at-large arrangement violates this standard is to be determined from the totality of circumstances of the particular case. In examining the totality of circumstances there is a panalopy of factors which have been relevant to this determination; however, the presence or absence of any particular factor or set of facts standing alone is not dispositive of the issue. Rather, the examination must "represent * * * a blend of history and intensely local appraisal of the design and impact of the multi-member district in light of past and present reality, political and otherwise." *White v. Regester,* supra, at 769-770.

(28) Plaintiffs have met their burden of proof, and the multi-member districting arrangement under the LeBlanc plan within the framework of facts and circumstances peculiar to the Parish of Rapides operates impermissibly to dilute or cancel out the voting strength of the black minority.

(29) The ultimate question is, of course, how these formal structures (multi-member districts, majority run-off),

informal structures (such as the one-party system), and political context (history of racial discrimination, etc.) operate in combination. The evidence demonstrates that in combination, these factors operate to minimize or cancel out the voting strength of the black minority in the parish,and thereby deny to them equal access to the political process. The experiences of blacks running in the milti-member districts under the LeBlanc Plan show that these factors, particularly in combination with racial bloc voting, effectively denies blacks access to the political process. The predictable outcome is that blacks are consistently defeated in the multi-member districts. This is no accident, nor is the mere function of losing fair elections. Rather, given the totality of circumstances of the political context which includes bloc voting, a one-party system, and the vestiges of a long history of racial discrimination, the LeBlanc plan clearly stacks the deck against blacks by the use of milti-member districts with a majority run-off requirement.

(30) Plaintiffs are entitled to judgment on both of the grounds urged. The proper standard to be applied is actually the *East Carroll* rule, since the plan in question–the LeBlanc Plan–is a court-ordered plan. However, we have made findings in the alternative that plaintiffs have met their burden under *White v. Regester* to demonstrate that the plan is also violative of the constitutional standards.

(31) The Supreme Court in *Whitcomb v. Chavis*, 403 U.S. 124, held that a district court judgment approving an apportionment plan is not binding on an application for reapportionment four years later, after initial decisions on constitutional apportionment had undergone considerable refinement in intervening Supreme Court decisions. In the instant case

there has been a significant change in law, in that since both the LeBlanc and Bradas cases, the United States Supreme Court decided *East Carroll Parish School Board v. Marshall*, and held for the first time that a court-ordered plan which had been submitted by one of the parties was not subject to Section 5 scrutiny but was subject to the single-member district rule of *Connor* and *Chapman*. The amicus brief of the United States discusses this development in detail, and it will not be repeated here.

(32) The Fifth Circuit decision (Bradas v. Rapides Parish Police Jury, et al) which defendants urge bars the present action was decided on an inadequacy of proof. The Fifth Circuit decision noted specifically that the record below was practically devoid of the type of evidence required in these cases: "Consideration of the evidence below in light of these factors emphasizes the dearth of appellees' proof." Under these circumstances, particularly since plaintiffs has demonstrated that such proof can be presented, it can hardly be said that the class of black voters was forever foreclosed. Further, the *East Carroll* case was pending in the United States Supreme Court when *Bradas* was decided, and had the *Bradas* plaintiffs sought review in that court, it is highly likely that the Fifth Circuit decision would have been overturned when the East Carroll opinion was handed down, as was done, for example, in *Wallace v. House*, U.S. , 44 U.S. , 44 U.S. Law Week 3607.

WHERE DO WE GO FROM HERE?

The multi-member districts must be disestablished. Le Blanc is out.

Neither courts nor police juries nor school boards are furnished with any specialized caliphers which enable them to extract from the general language of the law any mathematical formula which establishes what range of percentage deviations is permissible. Surely, the plan approved in *Bradas* (376 F. Supp. 690 at 694) which provides for nine single member districts with a maximum deviation of 2.2% achieves the primary goal of one man-one vote. When tested against proportional norms it affords to all groups a fair chance to realize full voting potential. On July 31, 1975, both public bodies favored this specific nine single member concept. The plan preserves to a substantial degree present lines and geographic boundaries. We adopt and order the implementation of the nine-member plan[2] for both public bodies.

WHEN?

The School Board presently operates under the plan. The members serve staggered terms. The elections which had been scheduled for August 14, 1976 under the LeBlanc plan have been enjoined. In lieu thereof an election is to be scheduled under the nine-member plan. A date will be set when and if this judgment becomes final.

The police Jury elections have been held under the Le Blanc plan. This election was mandated by federal court orders. To prevent needless expense and confusion, the tenure in office of the present members of the Police Jury (elected pursuant to federal court orders) is not to be disturbed. The nine-member plan is to be activated for the Police Jury

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2. Statistics and boundaries appear at 376 F.Supp. at 694, and in the exhibits.

at the next regular election for Police Jury scheduled to be held in the Rapides Parish.

THUS DONE AND SIGNED in Chambers at Lake Charles, Louisiana, on this the 30th day of September, 1976.

s/ Edwin F. Hunter, Jr.
EDWIN F. HUNTER, JR.
UNITED STATES SENIOR JUDGE

JUDGMENT - DATED SEPTEMBER 30, 1976

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA DIVISION

THOMAS R. PARNELL, ET AL
VS. CIVIL ACTION NO. 760364
RAPIDES PARISH SCHOOL BOARD,
ET AL

JUDGMENT

Pursuant to written memorandum this day entered,

IT IS ORDERED that multi-member districts be disestablished. The nine single-member district plan in *Bradas* (376 F.Supp. 690 at 694) is approved and is to be implemented. The tenure in office of the present members of the Police Jury (Elected in strict conformity with federal court orders) is not to be disturbed, but the nine-member plan is to be activated at the next regular election for Police Jury scheduled to be held in Rapides Parish.

Counsel for plaintiffs is to be awarded attorney's fees in due course. 42 U.S.C.A. 1973l(e).

SIGNED this 30th day of September, 1976, at Lake Charles, Louisiana.

s/ Edwin F. Hunter, Jr.
EDWIN F. HUNTER, JR.
UNITED STATES SENIOR
JUDGE

APPENDIX C - JUDGMENT DATED MARCH 20th, 1978

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA DIVISION

THOMAS R. PARNELL, ET AL
VS. CRIMINAL ACTION NO. 760364
RAPIDES PARISH SCHOOL BOARD,
ET AL

JUDGMENT

In view of the mandate of the United States Court of Appeals for the Fifth Circuit,

IT IS ORDERED that multi-member districts be disestablished. The nine-member single-member district plan in *Bradas* (376 F.Supp. 690 at 964) is approved and is to be implemented.

IT IS FURTHER ORDERED that elections for all seats on the Police Jury be conducted in 1978 on the same schedule as set by Louisiana Law for election of School Board members. The Police Jury so elected shall be issued their commissions and assume office as soon as these elections are final.

IT IS FURTHER ORDERED that the mandate of this Court holding in abeyance the election of School Board members is recalled. School Board elections shall be held on schedule in 1978.

SIGNED this 20th day of March, 1978, at Lake Charles, Louisiana.

s/ Edwin F. Hunter, Jr.
EDWIN F. HUNTER, JR.
UNITED STATES DISTRICT
SENIOR JUDGE

FILED
MAY 20 1978
MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1977

NO. 77-1492

RAPIDES PARISH POLICE JURY, ET AL.,

Applicants

versus

THOMAS R. PARNELL, ET AL.,

Respondents

RESPONSE TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES FIFTH CIRCUIT COURT OF APPEALS

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

NO. 77 - 1492

RAPIDES PARISH POLICE JURY, ET AL.
Applicants

v.

THOMAS R. PARNELL, ET AL.
Respondents

RESPONSE TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES FIFTH CIRCUIT COURT OF APPEALS

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Respondent prays that this Court deny the petition for Writ of Certiorari sought by petitioner Police Jury to review the decision of the United States Court of Appeals for the Fifth Circuit rendered November 17, 1977 affirming in part and modifying in part the judgment of the United States District Court for the Western District of Louisiana issued September 30, 1976.

QUESTION PRESENTED

Whether the District Court was within its discretion in providing as a remedy a 9-member single-member district plan of apportionment. For the Rapides Parish (county)

Police Jury (governing body) where 1) the number of members was within the range required by Louisiana Law for Police Juries, 2) the Police Jury did not propose a single-member district plan, but relied on its 18-member multi-member district plan, 3) the Court's 9-member single-member district plan had already been in operation and proved both feasible and not racially discriminatory, and 4) the Court's plan was acceptable to both the School Board and to the Black plaintiffs.

STATEMENT OF THE CASE

This is a routine redistricting case involving the formulation of an appropriate remedy for long ago conceded malapportionment. The conflict is between two conflicting plans: 1) an 18-member multi-member district plan advocated by the petitioner Police Jury; and 2) a 9-member single-member district plan advocated by Black plaintiff-respondents and found acceptable by the Rapides Parish School Board (which was a party in the District Court). Both the District Court and the Court of Appeals concluded that the 18-member multi-member district plan was an inappropriate remedy under the non-constitutional standard of *East Carroll Parish School Board v. Marshall*, 424 U.S. 636 (1976) *Chapman v. Meier*, 420 U.S. 1 (1975), and *Connor v. Johnson*, 402 U.S. 690 (1971). Based upon extensive evidence adduced at the trial, the district court went a step further and also concluded that the 18 member multi-member district plan was so clearly racially discriminatory that it would also violate the more stringent constitutional standard of *White v. Regester*, 412 U.S. 755, (1973). The Court of Appeals also agreed with this conclusion.

The petitioner Police Jury whose members are all white, did not propose or advocate any single-member district plan, but had stood on its 18 member multi-member district plan. As a remedy the District Court turned to the 9-member single-member district plan which had been in operation for a short period of time and under which the present School Board, including its two Black members, had been elected. The present Police Jury, which is all white, had been elected under the multi-member district plan. Since the 9-member single-member district plan had already been in operation, the District Court knew that its implementation was practical and that the plan was familiar to those charged with conduct of the elections as well as to the electorate as a whole. The District Court could also observe that in operation the plan was racially fair. The departures from perfect population circumstances include: 1) the fact that the petitioner Police Jury did not propose any single-member district plan, but relied on their 18-member multi-district plan; 2) that the 9-member single-member district plan had been in operation, was familiar to voters, the registrar and election officials, and had proved in operation to be both practicable and fair; 3) that the present school board, including two Black members, had been elected under the 9-member single-member district plan and accordingly the approval of that plan would avoid the disruption and confusion that would result from implementation of a new plan (particularly in view of the staggered terms of the Board); 4) that having the same plan for both School Board and Police Jury would tend to simplify political participation by an electorate that was no doubt confused by a succession of districting plans; 5) that the 9-member single-member district plan had an unusually low maximum deviation of 2.2% from the equi-populous norm.

Louisiana's state policy with respect to the number of police jurors is clearly different from Minnesota's policy with respect to the number of state senators. Minnesota's statute says flatly there shall be 67 state senators, whereas Louisiana's statute sets a range of five to fifteen jurors or any number that existed prior to the 1974 enactment. See LA. REV. STAT. ANN. § 33:1221 (West Supp. 1977) (reproduced at p. 40 of the petition for Certiorari).

In Parish Police Jury and School Board redistricting litigation in Louisiana it has long been recognized as elementary that the state policy simply provides a permissible range in the number of members and that reapportionment plans should stay within that range. *Turner v. McKeithen*, 490 F. 2d 191 (1973), provides an example of how this restraint as to the number of members operates. There, the Ouachita Parish Police Jury had been elected under a 19-member multi-member district plan. It proposed to the Court a 15-member multi-member district plan, but did not propose a single-member district plan. The District Court selected and the Fifth Circuit upheld a 6-member single-member equality in the 9-single member district plan are unusually low, the maximum deviation being 2.2%.

Both the District Court and a unanimous Court of Appeals agreed that the court-ordered 9-single member district plan conformed to the state policy respecting the number of police jurors, and that the choice of this particular plan, which happened to have fewer members than preferred by petitioners, was justified under the circumstances of this case.

REASONS FOR DENYING THE WRIT

The decision below is consistent with decisions of this Court, other decisions of the United States Court of Appeals for the Fifth Circuit, and does not conflict with decisions of other Circuits.

The only decision of this Court which petitioners contend conflicts with the decision below is *Sixty-Seventh Minnesota Senate v. Beens*, 402 U.S. 187 (1972). Such is clearly not the case.

In *Beens* the District Court reduced the size of the state senate from 67 to 35 members. The number of members of the Senate was firmly set at 67 by state statute and it had maintained that membership since 1913 though two reapportionments. This Court found the District Court's decision to be an abuse of discretion in that it unnecessarily interfered with the policy of state of Minnesota.

The present case is different from *Beens* in many obvious and important ways. In the first place the Court's remedy in the instance case does not conflict with the state policy respecting the number of jurors. Rather, the number of members in the Court's plan falls safely within the range set by the state statute. Secondly, there are a number of special circumstances in the present case, which were absent in *Beens*, which would justify the Court's choice of the 9-member single member district plan, even if it violated the state policy with respect to size. These district plan proposed by plaintiffs.

CONCLUSION

The decision below is consistent with decisions of this Court including *Beens, supra,* is consistent with other decisions of the Fifth Circuit including *Turner, supra,* and does not conflict with decisions of other circuits. The case is a routine one applying clear principles of federal decisional law in a manner that does not conflict with state policy. The case is simply not worthy of the discretionary Writ and respondents respectfully urge that the Petition for Certiorari be denied.

Respectfully submitted,

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_____

BY:

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Response to Petition for Certiorari has been served upon the following counsel of record:

James Brady, Esq.
Gravel, Roy and Burnes
711 Washington St.
P.O. Box 1792
Alexandria , LA 71301

New Orleans, Louisiana, this 19th day of May, 1978.

_____

STANLEY A. HALPIN, JR.